

Application No.: 10/582,775
Art Unit: 3651

Amendment Under 37 C.F.R. §1.111
Attorney Docket No.: 062552

AMENDMENTS TO THE DRAWINGS

The attached replacement sheet of drawings include changes to Figs.1, 2 and 3.

REMARKS

Claims 1-4 are currently pending. Claims 1, 2 and 3 are amended.

Drawings

The drawing objections have been overcome with the attached replacement sheet of drawings to add the legend "Prior Art" to Figures 1-3.

Rejections of Claims 1-4 Under 35 U.S.C. §112

Claims 1-4 were rejected under 35 U.S.C. §112, second paragraph. The claims have been amended above to overcome these rejections.

Rejections of Claims 1-4 Under 35 U.S.C. §§102(b) and 103(a)

Claims 1-4 were rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over **Wiese** (USP 5,318,194). It is submitted that the claims distinguish over the cited prior art in view of the numerous reasons below:

1. **Wiese** does not disclose or suggest the claimed pivotal flap "releasing one cigarette that is to be isolated." Instead, **Wiese** discloses a dispensing apparatus for a *pack* of cigarettes – not a single, individual cigarette in isolation.
2. The Office Action referred to reference number 130 in **Wiese** for the present claimed pivotal flap. However, 130 is a "picker" having prongs 132 carried on the end of a hooked pusher 134 (**Wiese**, column 4, lines 17-19, hereinafter formatted as "4:17-19"). The picker 130 in **Wiese** is not a "flap" at all.
3. The Office Action referred to reference number 202 in **Wiese** for the present claimed retaining element. Reference number 202 in **Wiese** is disclosed to be a resilient finger that is integral with the tray 28 and projects downwardly along

each stack 32 to retain the lowermost pack 30 within the tray 28 and the stack 32 (5:42-45). When the pusher 134 engages the lowermost pack 30 and pushes the pack 30 forward in the direction shown in Fig. 9, the resilient finger 202 is resiliently bent outwardly as shown in Fig. 9 to allow the lowermost pack to be pushed out from the stack 32 for collection on the collector shelf 92 (5:45-49). According to such disclosures in **Wiese**, the resilient finger 202 does *not* “hold back the remaining cigarettes in the shaft which is disposed above the flap in the direction of movement of the cigarettes.” All the resilient finger 202 does is to hold back the lowermost pack until it is pushed out. And, as the lowermost pack is being pushed out, the resilient finger 202 is simply bent outwardly to allow the lowermost pack to be pushed out – having nothing to do with holding back any remaining cigarettes.

4. The alleged flap 130 and the alleged retaining element 202 are not parts of a pivotal element as claimed. Notwithstanding the above distinctions regarding the picker 130 and the resilient finger 202 of **Wiese**, the further deficiency is that these elements (130 and 202) are separate, discrete, unconnected elements. They are not parts of a pivotal element.
5. The Office Action referred to Figs. 7-9 of **Wiese** for disclosing the claimed cooperation between the flap, retaining element, and shaft during rotary movement of the pivotal element. Notwithstanding the above distinctions, Figs. 7-9 of **Wiese** does not show any flap releasing one cigarette, while the retaining element enters the outlet track to hold back further cigarettes. **Wiese** merely shows the alleged retaining element 202 bending outwardly when a pack of cigarettes is being pushed out of the stack 32. Nothing in **Wiese** *enters* any outlet track to hold back anything.

6. The Office Action referred to Figs. 7-9 of **Wiese** for disclosing the claimed cooperation between the flap, retaining element, and shaft following the reverse rotation of the pivotal element. Notwithstanding the above distinctions, the alleged flap 130 is not holding back any packs of cigarettes during its entire operation. Figs. 7-9 of **Wiese** show the picker 130 as only contacting the lowermost pack of cigarettes. The picker 130 never contacts the remaining packs in the stack 32.
7. Regarding claim 2, contrary to the statement in the Office Action, Fig. 8 of **Wiese** shows the resilient finger 202 holding back the lowermost pack of cigarette. The resilient finger 202 is never acting on any “succeeding cigarette.” And, the resilient finger 202 does not clamp anything.
8. Regarding claim 4, the Office Action does not provide any reason for its rejection. A bare assertion that **Wiese** discloses the features of claim 4, without any reasoned explanation, does not constitute a proper rejection of the claim.

In view of the aforementioned amendments and accompanying remarks, Applicants submit that the claims, as herein amended, are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants’ undersigned attorney to arrange for an interview to expedite the disposition of this case.

Application No.: 10/582,775
Art Unit: 3651

Amendment Under 37 C.F.R. §1.111
Attorney Docket No.: 062552

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP

A handwritten signature in black ink, appearing to read "John P. Kong", with a stylized flourish at the end.

John P. Kong
Attorney for Applicants
Registration No. 40,054
Telephone: (202) 822-1100
Facsimile: (202) 822-1111

JPK/af

Enclosure: Replacement Sheet of Drawings